

Application No.: 09/828,607
Amendment dated November 8, 2004
In response to Examiner's Advisory Action dated October 4, 2004

REMARKS

Claims 1-27, 30-34, 47, 48, 50 and 57-60 are pending in this application.

Applicants request entry of the amendments submitted on September 8, 2004.

Applicants have amended claims 1 and 47 to recite that the formed permanent cartilage does not undergo resorption. Support for these claims is provided, e.g., on page 24, lines 22-25.

Applicants now address the Examiner's October 4, 2004 Advisory Action below:

35 U.S.C. § 112, first paragraph

Applicants acknowledge with appreciation the Examiner's withdrawal of the written description rejection.

35 U.S.C. § 112, second paragraph

The Examiner states that the term "permanent cartilage" is indefinite under 35 U.S.C. § 112, second paragraph because the term is not defined and it is unclear what is considered to be permanent. The Examiner states that no support for the definition of the term is provided and that the term "permanent" implies that the cartilage is never going to wear out or be removed which poses a problem under 35 U.S.C. § 112, first paragraph for lack of enablement.

Applicants traverse. Applicant respectfully submits that the term "permanent cartilage" is clearly defined in the specification to mean that the cartilage is not subject to resorption as evidenced by its continued existence at 4 months post-operation (see, e.g., on page 24, lines 22-25). Further support for this definition of "permanent" is provided by Example 13, which describes what permanent cartilage is not. That Example states that the cartilage that was only transiently present lacked the characteristic of a permanent tissue (see, e.g., page 39, line 28 to page 40, line 1). Accordingly,

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applicants request that the Examiner withdraw the indefiniteness rejection.

In response to the Examiner's contention that the term "permanent" implies that the "cartilage is never going to wear out or be removed which poses a problem under 35 U.S.C. § 112, first paragraph for lack of enablement", applicants have amended the claims to specify that the permanent cartilage does not undergo resorption, as exemplified in the specification on page 24, lines 22-25. Accordingly, applicants request that the Examiner withdraw the enablement rejection.

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CONCLUSION

In view of the foregoing remarks, applicants request that the Examiner favorably reconsider this application and allow the claims pending herein. If the Examiner believes that a telephone conference would expedite allowance of this application, she is invited to telephone the undersigned at any time.

Respectfully submitted,



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